



4310-05-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No.: WV-122-FOR; Docket ID: OSMRE-2013-0011;  
S1D1SSS08011000SX066A00067F144S180110;  
S2D2SSS08011000SX066A00033F14XS501520]

### West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE),  
Interior.

ACTION: Proposed Rule; reopening of the comment period.

SUMMARY: We are reopening the public comment period on a proposed amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment consists of a Special Reclamation Tax Credit Rule that was submitted to OSMRE on August 7, 2014. The purpose of this document is to provide the public 15

additional days to comment on the proposed amendment.

DATES: The comment period for the proposed rule published on May 20, 2014, at 79 FR 28858 – 28860 is reopened. We will accept written comments on this amendment and the Special Reclamation Tax Credit Rule being announced today until 4:00 p.m. EDT, on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following two methods:

**Federal eRulemaking Portal:** <http://www.regulations.gov>. The proposed rule has been assigned Docket ID OSM-2013-0011. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions.

***Mail/hand Delivery:*** Mr. Roger W. Calhoun, Director

Charleston Field Office

Office of Surface Mining Reclamation and Enforcement

1027 Virginia Street, East

Charleston, West Virginia 25301.

Please include the rule identifier (WV-122-FOR) with your written comments.

***Instructions:*** All submissions received must include the agency Docket ID

(OSMRE-2013-0011) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see “IV. Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document.

***Docket:*** The proposed rule and any comments that are submitted may be viewed over the internet at <http://www.regulations.gov>. Look for Docket ID OSMRE-2013-0011. In addition, you may review copies of the West Virginia program, this amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSMRE’s Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director

Charleston Field Office, Office of Surface Mining Reclamation and Enforcement

1027 Virginia Street, East

Charleston, West Virginia 25301

Telephone: (304) 347-7158

E-mail: [chfo@osmre.gov](mailto:chfo@osmre.gov).

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Morgantown Area Office

Office of Surface Mining Reclamation and Enforcement

604 Cheat Road, Suite 150

Morgantown, West Virginia 26508

Telephone: (304) 291-4004. (By Appointment Only)

Beckley Area Office

Office of Surface Mining Reclamation and Enforcement

313 Harper Park Drive, Suite 3

Beckley, West Virginia 25801

Telephone: (304) 255-5265.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director,  
Charleston Field Office, Telephone: (304) 347-7158. Email: [chfo@osmre.gov](mailto:chfo@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the West Virginia Program
- II. Description and Submission of the Proposed Amendment
- III. Description of OSMRE's Proposed Action
- IV. Public Comment Procedures
- V. Procedural Determinations

## **I. Background on the West Virginia Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “... a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act...; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, Federal Register (46 FR 5915). You can also find later actions concerning West Virginia’s program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

## **II. Description and Submission of the Proposed Amendment**

On June 6, 2014, the West Virginia State Tax Department filed a Special Reclamation Tax Credit Rule with the Secretary of State to implement the special reclamation tax incentive revisions at West Virginia Code Section 22-3-11(g) and (h) for mine operators who reclaim bond forfeiture sites within the State. The statutory revisions, as set forth in Committee Substitute for House Bill 2352, were previously announced

in the May 20, 2014, Federal Register (79 FR 28858-28860). On August 7, 2014, the West Virginia Department of Environmental Protection (WVDEP) submitted the proposed rule to OSMRE at a meeting of the Special Reclamation Fund Advisory Council (Administrative Record Number WV-1597). The purpose of this notice is to provide the public an additional 15 days to review and comment on the proposed amendment announced in the Federal Register on May 20, 2014, at 79 FR 28858 – 28860 and the Special Reclamation Tax Credit Rule being announced today.

### **III. Description of OSMRE’s Proposed Action**

#### **1. CSR 110- 29-1-6 Special Reclamation Tax Credit**

This rule further clarifies and implements the proposed revisions to West Virginia Code 22-3-11(g and h) relating to special reclamation tax incentives for mine operators who reclaim bond forfeiture sites. The new Special Reclamation Tax Credit regulations are set forth at the Code of State Regulations (CSR) 110-29-1 through 6.

Non-substantive additions at CSR 110-29-2 include definitions of “Act,” “Bond forfeited mine site,” “Secretary,” and “Tax Commissioner.”

CSR 110-29-1.5 clarifies that the special reclamation tax credit is only available to qualified operators for taxable years beginning on or after July 12, 2013.

Under the new tax credit rule at CSR 110-29-2.4, a qualified operator is any person that obtains a permit under the West Virginia Surface Coal Mining and Reclamation Act to mine coal and perform reclamation on a bond forfeited mine site and that qualifies for the special reclamation tax credit.

CSR 110-29-4 sets forth requirements governing the application for and the amount of the tax credit. Section 4 provides that a qualified operator may reclaim the bond forfeited mine site pursuant to either an Article 3 permit or a reclamation agreement. The amount of tax credit granted to the qualified operator is based on the amount of money that would have been spent from the Special Reclamation Fund and the Special Reclamation Water Trust Fund on the bond forfeited site as determined by the WVDEP Secretary.

CSR 110-29-5 specifies operator eligibility requirements for the tax credit and the limitation of the tax credit. A qualified operator may use the tax credit to offset payment of or liability for the special reclamation tax for the tax year or carry it forward for use in future tax years until no credit is remaining.

CSR 110-29-6 contains general procedures to claim and administer the tax credit. The qualified operator must provide complete and accurate forms and other information to claim the tax credit. In addition, the qualified operator must maintain records to verify the validity of the tax credit and the amount of tax credit claimed. Finally, the Tax Commissioner has the authority to audit the qualified operator.

All of the proposed State tax credit requirements identified above are intended to conform to the Federal requirements of 30 CFR 800.50 and sections 509 and 519 of SMCRA.

#### **IV. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

##### Written Comments

Send your written comments to OSMRE at one of the addresses given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

##### Availability of Comments



Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **V. Procedural Determinations**

### Executive Order 12866 – Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

### Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and

executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining

Dated: September 12, 2014.

Thomas D. Shope, Regional Director  
Appalachian Region

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